IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

HAWAII NURSES' ASSOCIATION,	)	CIVIL NO. 09-00235 SOM-LEK
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
THE QUEEN'S MEDICAL CENTER,	)	
	)	
Defendant.	)	
_____	)	

REPORT OF SPECIAL MASTER ON PLAINTIFF'S MOTION FOR ATTORNEYS' FEES

Before the Court, pursuant to a designation by Chief United States District Judge Susan Oki Mollway, is Plaintiff Hawaii Nurses' Association's ("HNA") Motion for Attorneys' Fees ("Motion"), filed on October 7, 2009. HNA requests an award of $15,650.35 in attorneys' fees. Defendant The Queen's Medical Center ("QMC") filed its memorandum in opposition on November 4, 2009, and Plaintiff filed its reply on November 18, 2009. The Court finds this matter suitable for disposition without a hearing pursuant to Rule LR7.2(d) of the Local Rules of Practice of the United States District Court for the District of Hawai`i ("Local Rules"). After reviewing the parties' submissions and the relevant case law, the Court FINDS AND RECOMMENDS that HNA's Motion be DENIED.

BACKGROUND

At all times relevant to the instant case, HNA and QMC were parties to a Collective Bargaining Agreement effective from

December 1, 2008 to November 30, 2011 ("CBA"). On December 15, 2008, HNA initiated a grievance on behalf of Darath Ruamsap, R.N., alleging that QMC violated the CBA by failing to pay her the proper compensation for her weekend night shift work. The grievance proceeded through the usual steps and, on January 5, 2009, HNA submitted a letter stating its intent to proceed to the fourth step of the grievance process, arbitration. The parties continued settlement discussions, but HNA alleges that those discussions stalled, prompting it to submit another request to arbitrate the grievance on April 17, 2009. HNA alleges that QMC again failed to respond to the request to arbitrate.

On May 26, 2009, HNA filed the instant action pursuant to § 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185, seeking an order compelling QMC to arbitrate the Ruamsap dispute. HNA filed its Motion to Compel Arbitration on August 19, 2009. On September 11, 2009, QMC filed a joint memorandum in opposition to the Motion to Compel Arbitration and Counter Motion for Dismissal Without Prejudice ("Counter Motion"). HNA filed a reply on September 18, 2009.

On September 22, 2009, the district judge held a telephone conference with counsel. The parties agreed that the Ruamsap dispute would be arbitrated, and the district judge deemed the Motion to Compel Arbitration and the Counter Motion withdrawn. The district judge noted that the only issue

remaining was attorneys' fees. On September 23, 2009, the district judge issued an entering order ("9/23/09 EO") stating that the case would be dismissed. The district judge noted that the 9/23/09 EO had no effect on any party's right to attorneys' fees and costs. That same day, the Clerk of the Court entered judgment pursuant to the 9/23/09 EO. The instant Motion followed.

HNA acknowledges that "[t]here is no prevailing party or claim in this case[,]" and that a prevailing party generally cannot recover its attorneys' fees absent statutory or contractual provision for the recovery of attorneys' fees. [Mem. in Supp. of Motion at 2-3.] HNA, however, argues that attorneys' fees can be awarded in LMRA cases based on a bad faith standard. [Id. at 3 (citing Roy Allen Slurry Seal v. Laborers Int'l Union of N. Am. Highway and Street Stripers/Road and Street Slurry Local Union 1184, AFL-CIO, 241 F.3d 1142, 1148 (9th Cir. 2001)).] HNA asserts that both bad faith conduct which led to the filing of an action and bad faith conduct that occurred during the course of an action are subject to sanction. HNA argues that QMC acted in bad faith because it unequivocally refused to arbitrate the Ruamsap grievance, even though it had no basis to refuse to arbitrate. HNA emphasizes that QMC failed to respond to numerous requests to submit the grievance to arbitration and that QMC was aware that Ms. Ruamsap filed a Duty of Fair Representation charge

against HNA. Thus, HNA argues that QMC was aware that it was necessary to arbitrate the grievance. HNA further alleges that, even after HNA filed the instant action, QMC continued to avoid attempts to move the grievance into arbitration until QMC finally changed its position in August 2009 and agreed select an arbitrator and schedule the arbitration. HNA therefore argues that QMC's actions in this matter constitute bad faith, warranting an award of attorneys' fees.

HNA argues that the hourly rates requested by its counsel are reasonable and within the range of rates charged in the community. Further, HNA asserts that the number of hours spent on this case were reasonable and necessary.

In its memorandum in opposition, QMC argues that an award of attorneys' fees and costs is not warranted under the circumstances of this case because HNA is not a prevailing party in this matter. QMC notes that HNA filed its Motion to Compel Arbitration knowing that QMC was willing to arbitrate the Ruamsap grievance. QMC argues that there is a fifteen-year-long practice between the parties of holding arbitrations in abeyance during settlement discussions. Further, while HNA reserved its right to seek arbitration, it never took steps to move the grievance forward into arbitration. QMC asserts that, if HNA desired to seek attorneys' fees as the prevailing party, it should not have agreed to withdraw the Motion to Compel Arbitration. Finally,

QMC argues that, if the Court finds that QMC's failure to select an arbitrator and an arbitration date constitute bad faith, HNA cannot recover attorneys' fees incurred after August 6, 2009 - the date the parties reached an agreement to arbitrate.

In its reply, HNA argues that prevailing party status is not necessary to recover attorneys' fees based on bad faith. HNA further denies the existence of any past practice to hold arbitrations in abeyance during settlement discussions; such a practice would be contrary to the CBA. Even if such a past practice did exist, QMC could not rely on it in the face of HNA's demands to arbitrate. HNA reiterates its position that it is entitled to all of the fees requested in the Motion, but it notes that QMC does not contest HNA's entitlement of fees incurred up to August 6, 2009. Finally, HNA points out that QMC did not contest counsel's requested hourly rates or the descriptions of the work that counsel performed.

DISCUSSION

Under the "American Rule", the prevailing party generally cannot recover its attorneys' fees "unless an independent basis exists for the award." Middle Mountain Land & Produce Inc. v. Sound Commodities Inc., 307 F.3d 1220, 1225 (9th Cir. 2002) (citation omitted). The United States Supreme Court has noted that the exceptions to the American Rule include: (1) statutory basis; (2) enforceable contract; (3) willful violation

of court order; (4) bad faith action; and (5) litigation creating common fund for the benefit of others. See Alyeska Pipeline Serv. Co. v. Wilderness Soc'y, 421 U.S. 240, 257-59 (1975). "These exceptions are unquestionably assertions of inherent power in the courts to allow attorneys' fees in particular situations, unless forbidden by Congress[.]" Id. at 259.

Section 301 of the LMRA does not provide for an award of attorneys' fees. See, e.g., Zeman v. Office & Prof'l Employees Int'l Union, Local 35, 91 F. Supp. 2d 1247, 1249 (E.D. Wis. 2000) ("Section 301 . . . does not authorize the award of attorney fees[.]"); Ison v. Benham Coal, Inc., 668 F. Supp. 594, 597 (E.D. Ky. 1987) ("The Labor-Management Act does not authorize an award of attorney fees to a successful party in a section 301 action. The absence of such authorization has been deemed to bar such an award." (citation omitted)). HNA, however, asserts "the Ninth Circuit has instructed that requests for attorneys' fees under the Labor Management Relations Act should be examined under a bad faith standard." [Mem. in Supp. of Motion at 3 (citing Roy Allen Slurry Seal v. Laborers Int'l Union of N. Am. Highway and Street Stripers/Road and Street Slurry Local Union 1184, AFL-CIO, 241 F.3d 1142, 1148 (9th Cir. 2001)).] Further, HNA argues that an award of attorneys' fees under this bad faith standard does not require a finding that the party seeking fees was the prevailing party. [Reply at 2.] HNA's argument is misplaced.

In Roy Allen Slurry Seal ("RASS"), the Ninth Circuit Court of Appeals did state that, if the issue were properly before the district court on remand, the district court should consider RASS's request for attorneys' fees under the LMRA "under a bad faith standard." See 241 F.3d at 1148 (citing Wellman v. Writers Guild of Am., West, Inc., 146 F.3d 666, 674 (9th Cir. 1998)). RASS, however does not support HNA's position because RASS was the prevailing party. RASS filed suit seeking to vacate an arbitration award and the district court ultimately did so after denying the opposing party's motion to confirm the award. See id. at 1144-45. Further, the court in RASS cited Wellman v. Writers Guild of America, West, Inc., an LMRA case in which the Ninth Circuit Court of Appeals stated "[a] prevailing party may receive attorneys' fees if his adversary acted in bad faith, vexatiously, wantonly, or for oppressive reasons." Wellman, 146 F.3d at 674 (citation and quotation marks omitted) (emphasis added). The party seeking attorneys' fees in Wellman had been granted summary judgment. See id. at 670.

HNA also relies upon International Union of Petroleum & Industrial Workers v. Western Industrial Maintenance, Inc., 707 F.2d 425, 428 (9th Cir. 1983), for, *inter alia*, the proposition that a defendant's refusal to grant the plaintiff his "clear legal rights" can constitute bad faith. [Mem. in Supp. of Motion at 3-4.] This case, however, also states that "a court may

assess attorneys' fees 'when the losing party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons.'" Int'l Union of Petroleum & Indus. Workers, 707 F.2d at 428 (quoting Alyeska Pipeline Service Co. v. Wilderness Society, 421 U.S. 240, 258-259, 95 S. Ct. 1612, 44 L. Ed. 2d 141 (1975)) (some quotation marks omitted) (emphasis added). The party seeking attorneys' fees in that case had filed a petition for confirmation of an arbitration award and the district court confirmed the award. See id. at 426-27.

HNA also relies heavily on International Brotherhood of Teamsters, Local Union No. 727, AFL-CIO v. Duchossois Industries, Inc. ("Duchossois"), No. 92 C 8143, 1993 WL 41426 (N.D. Ill. Feb. 12, 1993). [Mem. in Supp. of Motion at 16-18.] In Duchossois, the district court granted the union's petition to compel arbitration and awarded the union attorneys' fees under § 301 of the LMRA because the employer forced the union to file suit to enforce a clear contractual right to arbitrate the underlying dispute and the employer had no legal or factual basis to deny arbitration. See 1993 WL 41426, at *2. Duchossois is therefore distinguishable from the instant case and does not support HNA's position because, in the instant case, HNA withdrew its Motion to Compel Arbitration and the district judge dismissed the case. See id. ("Attorneys' fees will be awarded to a prevailing party under § 301 of the LMRA only if his opponent's suit or defense

was frivolous, which our cases define to mean brought in bad faith-brought to harass rather than to win." (citations and quotation marks omitted) (emphasis added)).

Thus, all of the cases that HNA cites require the party seeking attorneys' fees under the LMRA bad faith standard to be the prevailing party. HNA has failed to point to any caselaw supporting its claim that prevailing party status is not required in such cases, nor has this Court found any.

HNA concedes that there is no prevailing party in this case.[1] [Mem. in Supp. of Motion at 2.] Insofar as HNA is not the prevailing party, this Court FINDS that HNA is not entitled to attorneys' fees under the bad faith standard applicable in LMRA cases.

CONCLUSION

In accordance with the foregoing, this Court, acting as Special Master, FINDS AND RECOMMENDS that HNA's Motion for Attorneys' Fees, filed on October 7, 2009, be DENIED.

IT IS SO FOUND AND RECOMMENDED.

[1] Even if HNA had not conceded this issue, the Court would find that HNA is not a prevailing party because it did not achieve a "judicially sanctioned change in the legal relationship of the parties." See Buckhannon Bd. & Care Home, Inc. v. W. Vir. Dep't of Health & Human Res., 532 U.S. 598, 605 (2001).

DATED AT HONOLULU, HAWAII, January 15, 2010.

/S/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States Magistrate Judge

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